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June 13, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Re: WC Docket No. 05-25 & RM-10593, XO's Comments

Dear Ms. Dortch:

Please find attached for filing in the above-referenced dockets, Comments of XO Communications Inc. on the Commission's Order and Notice of Proposed Rulemaking released January 31, 2005.

Please do not hesitate to contact me at (202) 887-1240 if you have any questions or concerns regarding this filing.

Sincerely,



Kimberly A. Scardino

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Special Access Rates for Price Cap Local)	WC Docket No. 05-25
Exchange Carriers)	
)	
AT&T Corp. Petition for Rulemaking to)	RM-10593
Reform Regulation of Incumbent Local)	
Exchange Carrier Rates for Interstate Special)	
Access Services)	

COMMENTS OF XO COMMUNICATIONS, INC.

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I. INTRODUCTION AND SUMMARY

XO Communications, Inc. ("XO"), through counsel, submits these comments on the Federal Communications Commission's ("FCC" or "Commission") Order and Notice of Proposed Rulemaking ("NPRM") released January 31, 2005 in the above referenced dockets. In the *NPRM*, the Commission seeks comment on the special access regulatory regime that should follow the CALLS plan, including whether the Commission should maintain or modify its current pricing flexibility rules for special access services.¹ The FCC asks parties to comment on "whether actual marketplace developments support the predictive judgments that underlie the special access pricing flexibility rules."² Since AT&T's Petition for Rulemaking was filed in 2002, the Commission has amassed a record of evidence that demonstrates that the current special access pricing flexibility rules are not working as intended. Bell Operating Company ("BOC") special access rates have increased to levels far in excess of cost in places where pricing flexibility has been granted, and BOC special access revenues have increased significantly since the FCC's *1999 Pricing Flexibility Order*.³ The pricing flexibility triggers are not adequate predictors of competition and are incapable of addressing the current problem of ILEC dominance of the special access market. Moreover, special access pricing under pricing flexibility is harming competitors and consumers alike. The FCC should revoke pricing

¹ *Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Notice of Proposed Rulemaking, WC Docket No. 05-25 and RM-10593, FCC 05-18 (rel. January 31, 2005) ("*NRPM*").

² *NPRM* ¶ 5.

³ *NPRM* ¶ 3.

flexibility and immediately reinitialize special access rates at the FCC authorized 11.25% rate of return.

II. BACKGROUND

In 1999, the Commission issued its *Pricing Flexibility Order* in which it granted the ILECs greater pricing flexibility for special access services “[a]s they face increasing competition.”⁴ The Commission intended pricing flexibility to provide regulatory relief for special access services where competition was developing for those services.⁵ The special access pricing flexibility rules permit the ILECs to obtain freedom from price regulation on an MSA-by-MSA basis provided collocation exists within a given MSA.⁶ In crafting a framework for special access pricing flexibility, the Commission expressed reservation about ILEC pricing behavior and its potential effect on competition.⁷ The Commission assumed that the competitive

⁴ *In re Access Charge Reform*, Fifth Report and Order, 14 FCC Rcd. 14221, 14272 ¶ 93 (1999) (“*Pricing Flexibility Order*”).

⁵ *NPRM* ¶ 18.

⁶ Under the pricing flexibility rules, flexibility is granted in two steps or phases. In Phase I, ILECs receive the right to offer volume and term discounts and to enter into contract tariffs (in which they tailor the price and service to the “individualized” needs of a particular customer). In order to receive such flexibility for transport services, the ILEC need only show that *one* collocated carrier using non-ILEC interoffice transport is present in 15 percent of the wire centers in the MSA or in wire centers representing 30 percent of the ILEC’s revenues from dedicated transport and special access services other than channel terminations between ILEC end offices and end user premises in an MSA. Phase II allows ILECs to escape price cap regulation altogether for certain services. The standards for Phase II pricing flexibility are substantially the same as Phase I, with the exception that non-affiliated carriers must have collocated in 50 percent of the wire centers in the MSA or in wire centers representing 65% of the ILEC’s revenues from dedicated transport and special access services other than channel terminations between ILEC end offices and end user premises in an MSA. *Pricing Flexibility Order* ¶ 24-25.

⁷ *See Pricing Flexibility Order* at ¶ 83 (“[w]e acknowledge that, because we will evaluate pricing flexibility requests on an MSA basis and do not require the presence of competitive facilities in every wire center in an MSA, there remains a theoretical possibility that an incumbent LEC could use pricing flexibility in a predatory manner to deter investment in competitive facilities in those wire centers where it faces no competition.”)

collocation trigger would “predict the existence of competitive pressures that would discipline interstate special access rates.”⁸

On October 15, 2002, AT&T filed a Petition for Rulemaking requesting that the Commission initiate a proceeding to reform regulation of price cap rates for interstate special access services.⁹ In its Petition, AT&T argued that competitive entry has not occurred in markets where the BOCs have satisfied the Commission’s pricing flexibility rules, and that the BOCs have used pricing flexibility to maintain or raise special access rates.¹⁰ AT&T’s Petition showed how the BOCs “have not used rate deregulation to meet competition, but to gouge both their captive special access customers and the general public.”¹¹ To remedy the situation, AT&T requested that the FCC initiate a proceeding to examine the issue and, on an interim basis while the proceeding was pending, reinitialize Phase II pricing flexibility special access rates at the FCC’s authorized 11.25 percent rate of return.¹² In initiating this proceeding, the FCC granted AT&T’s Petition, in part. In doing so, the Commission declined to adopt the interim relief sought by AT&T of retargeting special access rates at the 11.25% authorized rate of return because it did not feel that one year’s worth of data from 2001 was sufficient to justify the relief requested.¹³

Since AT&T’s Petition was filed, the Commission has collected information on

⁸ NPRM ¶ 18 (citing *Pricing Flexibility Order*).

⁹ *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Petition for Rulemaking (filed October 15, 2002) (“*AT&T Petition*”).

¹⁰ NPRM ¶ 6 (citing *AT&T Petition*).

¹¹ *AT&T Petition* at 3.

¹² *AT&T Petition* at 39-40.

¹³ NPRM ¶ 129.

the BOCs' special access pricing practices as recently as December 2004. Evidence presented in the *Triennial Review Remand* supports AT&T's Petition and justifies the relief requested. The BOCs retain market power in the provision of special access services and are abusing that market power with unjust and unreasonable rates. The Commission's existing rules are incapable of addressing this problem and reform is necessary to protect the public interest.

III. ARGUMENT

A. Deregulation Has Not Disciplined Special Access Pricing

Like other CLECs, XO has been frustrated by the ILECs' anti-competitive practices with respect to pricing and provisioning of special access services.¹⁴ Indeed, the Commission has acknowledged that ILECs exercise great control over special access pricing under pricing flexibility.¹⁵ The ability of the ILECs to control prices for services for which there is little competition, coupled with the inability of the Commission to prevent competitive harm,¹⁶

¹⁴ See Ex Parte Letter from Christopher T. McKee, XO, to Marlene H. Dortch, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (August 11, 2004) at 9-14 (explaining how above-cost pricing of special access services provides for greater opportunities for price discrimination and price squeezes); and at 18-19 (discussing ILEC anti-competitive practices relating to the conversion of special access circuits to UNEs, and Verizon's refusal to allow XO to take advantage of the Commission's routine network modifications requirements on a timely basis.)

¹⁵ See *TRRO* ¶ 56 (discussing the extent of the ILECs' control of special access pricing under pricing flexibility); ¶ 59 (stating "the freedom associated with the pricing flexibility regime would pose grave risks to competition" if UNE access were eliminated, and noting that special access pricing under pricing flexibility falls largely within the ILECs control); ¶ 63 (explaining that under the existing pricing flexibility rules, an incumbent "could—on one day's notice, without Commission approval, and with limited market-based discipline—render competition untenable by raising [special access] tariffed prices.")

¹⁶ See *In the Matter of Unbundled Access to Network Elements* (WC Docket No. 04-313) *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338), Order On Remand, FCC 04-290 (rel. February 4, 2005) ("*TRRO*") ¶ 62 ("while the Commission has authority to suspend or reject special access tariffs prior to their going into effect, this is not an effective tool...[E]nforcement actions take place after a competitor has already suffered harm due to violation of the Commission rules.")

demonstrates that the existing pricing flexibility rules are not disciplining interstate special access rates.¹⁷

Evidence presented in the *Triennial Review Remand* confirms that the ILECs dominate the provision of special access to businesses nationwide.¹⁸ In a study presented by Economics and Technology, Inc. (“ETI”) for the Ad Hoc Telecommunications Users Committee, the authors conclude that neither the existing level of competition for special access services nor the threat of competitive entry is constraining the ILECs’ exercise of market power.¹⁹ A review of the BOCs’ earnings for special access services for 2003 compared to the FCC’s most recently authorized rate of return of 11.25 percent reveals that the BOCs are earning two to six times the FCC’s authorized rate of return.²⁰ Moreover, as the FCC noted, from 1991 to 2003, annual revenues from BOC interstate special access services increased from \$2.5 billion to \$13.5 billion, and special access revenues as a percentage of all BOC interstate operating revenues increased from 12.8 percent to 45.4 percent.²¹

Although the Commission intended for its special access pricing flexibility rules to result in decreased rates in areas where the Commission believed competition would force prices to market levels, this unfortunately has not proven true. On the contrary, special access pricing has risen dramatically under the pricing flexibility regime. In 2003, The Phoenix Center for Advanced Legal and Economic Public Policy Studies (“Phoenix Center”) found that the FCC’s

¹⁷ *NPRM* ¶ 18.

¹⁸ See e.g., *Competition in Access Markets: Reality or Illusion, A Proposal for Regulation Uncertain Markets* Prepared for the Ad Hoc Telecommunications Users Committee, August 2004 at 12 (“*ETI White Paper*”), attached to the Ex Parte Letter from Colleen Boothby, counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, FCC, WC Docket No. 04-313 (filed September 30, 2004).

¹⁹ *ETI White Paper* at 27-28.

²⁰ *ETI White Paper* at 28.

²¹ *NPRM* ¶ 3.

1999 deregulatory scheme for special access has resulted in substantial and sustained price increases for special access in areas where the ILECs were granted pricing flexibility for such services.²² After detailed study, the Phoenix Center found that, on average, the rates subject to pricing flexibility over the previous four years were substantially higher than previous regulated rates, and were sustained over a significant period of time.²³ The authors showed that, while the amount of the increase varies substantially among ILECs, deregulated rates (*i.e.*, those subject to pricing flexibility) exceed the regulated (price cap) rates for all ILECs. The chart below summarizes the analysis.²⁴

**AVERAGE % INCREASE OF
DEREGULATED PRICES FOR SPECIAL ACCESS SERVICES
COMPARED TO REGULATED PRICES CHARGED BY EACH BOC**

	<u>BellSouth</u>	<u>SBC</u>	<u>Verizon</u>	<u>Qwest</u>
DS1	3%	10%	14%	20%
DS3	12%	10%	10%	0%

The Phoenix Center concluded that the majority of the price increases were accounted for by the increased ability of the ILECs to exercise their market power, not an increase in costs:

[T]he price increases for Special Access services where pricing flexibility is granted appear to be predominantly *driven by market power and not costs*. Consequently, it appears that the wide geographic markets and collocation triggers of the Commission's [pricing flexibility] deregulatory paradigm have led to an increased exercise of market power in (at least some) Special Access markets, thus placing an unnecessary drain on the U.S. economy.²⁵

²² George S. Ford & Lawrence J. Spiwak: "Set It and Forget it? Market Power and the Consequences of Premature Deregulation in Telecommunications Markets," (Phoenix Center Policy Paper No. 18) (July 2003) at 8. ("*Phoenix Center Paper*").

²³ *Id.*, at 23.

²⁴ *Id.*, at 23, 25 & Table 1.

²⁵ *Id.*, at 27 (emphasis added).

Other leading economists reached the same conclusion. The *Mayo/MiCRA/Bates White Economic Impairment Analysis* finds that “[t]here is abundant proof that special access is priced significantly above cost, and that neither competition nor regulation constrains prices effectively.”²⁶ The authors go on to state that the “RBOCs have taken advantage of pricing flexibility to raise special access rates in the geographic areas no longer subject price caps.”²⁷

In the *Triennial Review Remand*, competitors like MCI, AT&T, XO and other members of the Loop and Transport CLEC Coalition presented similar evidence of BOC special access market power dominance since pricing flexibility was granted.²⁸ On behalf of AT&T, Economist Lee Selwyn stated that “the ability of the RBOCs to raise special access prices after the grant of pricing flexibility is a result of the RBOCs continuing market power with respect to these services.”²⁹ Wil Tirado, Director of Transport Architecture for XO, testified that competitors are observing a “steady increase in special access pricing” and a reluctance by the major ILECs to negotiate meaningful commercial contracts for special access services.³⁰

²⁶ *Mayo/MiCRA/Bates White Economic Impairment Analysis*, October 4, 2004, ¶ 116 (“*MMBW Analysis*”), attached to the Ex Parte letter from Thomas Cohen, The KDW Group, to Marlene H. Dortch, FCC, WC Docket No. 04-313 (filed October 5, 2004).

²⁷ *MMBW Analysis* ¶ 116 (emphasis omitted.)

²⁸ See e.g., *Comments of MCI*, WC Docket No. 04-313 (October 4, 2004) (“*MCI TRR Comments*”) at 154 (“The ILECs’ market power over the market for DS1 and DS3 facilities, coupled with the Commission’s decision largely to deregulate the pricing of those facilities, has resulted in prices that are far in excess of cost. The result is that special access has become the ILECs’ most profitable line of business.”); at 154-155 (“The Commission’s current [special access] pricing rules enable the incumbent LECs to charge rates for special access that far exceed competitive levels, and their reported rates of return on interstate special access reflect that fact.”); at 157 (“FCC action [on special access] is necessary to end the current situation in which prices fail to decrease even as costs continue to decline.”); and at 158 (“Special access rates have risen or stayed the same in virtually every MSA in which the BOCs have obtained Phase II pricing flexibility.”)

²⁹ Reply Declaration of Lee L. Selwyn on behalf of AT&T, Reply Comments of AT&T, WC Docket No. 04-313 (October 19, 2004) at ¶ 107.

³⁰ Declaration of Wil Tirado, Attachment B to Loop and Transport Coalition Comments, WC Docket No. 04-313 (October 4, 2005) at ¶ 49.

CLECs are observing a trend showing a *steady increase* in special access pricing – this despite the fact that ILECs already are realizing monopolistic profit margins (rates of return) averaging 40% or more on the service.³¹ ETI determined that in 2003, the BOCs absorbed profits (realized rates of return) on special access services averaging 43.7%³² The *MMBW Analysis* confirms that in 2003 special access earnings averaged 43.7% for all the RBOCs.³³ The evidence speaks for itself—since pricing flexibility, the RBOCs have realized staggering rates of return on special access services.

There is no reason to believe that the ILECs will lower special access rates in the future. Market evidence indicates that the reverse is true. Last year, several ILECs have filed for substantial, across-the-board increases in special access rates.³⁴ In addition, after the existing rules requiring ILECs to provide high-capacity UNEs were vacated by *USTA II*, some CLECs attempted to negotiate “commercial alternatives” with the major ILECs, only to find the ILECs unwilling to offer any meaningful new volume and term special access discount plans.³⁵ In the past year, XO has tried unsuccessfully to negotiate commercial agreements with the BOCs for channel termination and dedicated transport services using Phase I pricing flexibility contract tariffs as a baseline for negotiation. In general, all the BOCs have shown an unwillingness to negotiate commercially reasonable terms.

The absence of special access price regulation in MSAs across the country has placed the BOCs in a position to raise rivals’ costs for essential wholesale inputs. As the ILECs have raised

³¹ See *Loop and Transport CLEC Coalition Comments*, WC Docket No. 04-313 (October 4, 2005) at 41-48 (“*Loop and Transport CLEC Coalition Comments*”).

³² *ETI Study* at iv.

³³ *MMBW Analysis* at 60.

³⁴ *Loop and Transport CLEC Coalition Comments* at 48.

³⁵ *Loop and Transport CLEC Coalition Comments* at 48.

wholesale channel termination prices, which XO has been forced to use as an input to its retail products,³⁶ XO has experienced reduced margins while the ILECs receive increased wholesale margins and stable retail revenues. The current market situation where both retail and wholesale ILEC pricing is largely deregulated allows the ILEC to discriminate against competitors and creates an environment ripe for a classic price squeeze. Under pricing flexibility, the BOCs are able to blithely raise the costs of their rivals because there is little to no competition to discipline special access rates. As a result, competitors and consumers are harmed. Clearly, this is not what the Commission intended when it adopted the pricing flexibility regime. In order to protect the public interest, the Commission must revoke pricing flexibility for special access.

B. The Pricing Flexibility Triggers Are Not Adequate Predictors of Competition

When it adopted pricing flexibility for special access, the Commission developed competitive triggers “designed to measure the extent to which competitors had made irreversible, sunk investment in collocation and transport facilities.”³⁷ The Commission found that the triggers “would accurately predict the existence of competitive pressures that would discipline interstate special access rates.”³⁸ Since 1999, the BOCs have been granted pricing flexibility in over 200 MSAs,³⁹ yet prices for special access services have increased. Clearly, the rules are not working as intended. As the *Phoenix Center Paper* aptly states, “[i]f an increased exercise of market power is observed in Special Access markets, then either the Commission’s triggers are inadequate indicators of competition,” or “its market boundaries are too wide....”⁴⁰

³⁶ See Ex Parte Letter from Christopher McKee, XO, to Marlene Dortch, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (August 11, 2004).

³⁷ NPRM ¶ 16.

³⁸ NPRM ¶ 18.

³⁹ MCI TRR Comments at 156 (footnote omitted).

⁴⁰ *Phoenix Center Paper* at 23.

The *Phoenix Center Paper* explains why the collocation trigger is not an accurate predictor of competition. First, there is no evidence that the Commission engaged in a market power analysis to support its position in the *Pricing Flexibility Order* that the collocation triggers were “sufficient to preclude the incumbent from exploiting any monopoly power....”⁴¹ Second, as the FCC has noted, “the pricing flexibility triggers require only the presence of a single competitive transport provider, and do not require the presence of any facilities-based provider of channel terminations, before a price cap LEC is granted pricing flexibility.”⁴² Thus, satisfaction of the collocation trigger requirement is in “no way probative of competition for interoffice transport or channel terminations.”⁴³ Third, the presence of collocation in a central office only demonstrates that an entrant “may have tried to enter” the market; it does not reveal the market the collocator actually serves or served, or the success of the entry or the competitive entrant’s continued presence in the market.⁴⁴

Recently, the Commission acknowledged that the pricing flexibility triggers “do not necessarily demonstrate that competitive deployment is sufficiently extensive...”⁴⁵ Additionally, the Commission declined to adopt a similar fiber-based collocator test for UNEs in the *Triennial Remand Order* on the basis that the presence of one fiber-based collocator is insufficient evidence of competitors’ ability to compete in a particular market.⁴⁶

⁴¹ *Phoenix Center Paper* at 19 (citing *Pricing Flexibility Order* at ¶ 141); *See also TRRO* fn 167 (noting that the “*Pricing Flexibility Order* specifically declined to link the pricing flexibility triggers to any finding that incumbent LECs no longer have market power in the provision of services at issue.”)

⁴² *TRRO* at ¶ 62.

⁴³ *Phoenix Center Paper* at 19.

⁴⁴ *Phoenix Center Paper* at 19.

⁴⁵ *TRRO* ¶ 62.

⁴⁶ *TRRO* ¶ 121.

For special access pricing flexibility, the Commission chose the MSA to be the appropriate geographic market for determining whether the collocation trigger had been satisfied in a relevant market. In the *TRRO*, the FCC rejected application of an MSA-wide impairment test for loops and transport in favor of a route-based approach.⁴⁷ The Commission reasoned that “[d]ue to the wide variability in market characteristics within an MSA, MSA-wide conclusions would substantially over-predict the presence of actual deployment, as well as the potential ability to deploy.”⁴⁸ This is exactly what is happening with pricing flexibility for special access services: the Commission’s MSA-based collocation triggers are over-predicting competition.

As the Commission pointed out in the *TRRO*, “MSAs are comprised of communities that share a locus of commerce, but not necessarily common economic characteristics as they relate to telecommunications facilities deployment.”⁴⁹ Detailed transport maps submitted by the RBOCs in the Triennial Review Remand proceeding showing competitive transport deployment and other information on an MSA basis, “confirm that competitive fiber consistently is located in and around the core business district of every major city—and not necessarily elsewhere.”⁵⁰

In MSAs where pricing flexibility has been granted, competitive entry is limited geographically. Among the 200 MSAs where special access pricing flexibility has been granted, there are tens of thousands of buildings and hundreds upon hundreds of transport routes with no facilities-based competitive provider offering an alternative to the ILEC. Because the collocation trigger and its MSA-wide application have proved faulty, the Commission should revoke pricing flexibility in favor of a system that better controls special access pricing.

⁴⁷ *TRRO* ¶ 82.

⁴⁸ *TRRO* ¶ 82.

⁴⁹ *TRRO* ¶ 82.

⁵⁰ *TRRO* ¶ 82.

Revising the predictive triggers will do little to address the current problem of increased special access rates. Because the BOCs dominate the special access market, the only solution is to revert to a price cap regime where the BOCs exercise less control over pricing.

C. XO Supports Reform Suggested by AT&T and Ad Hoc Users

The existing special access pricing flexibility regime is fatally flawed, and there is no reason to believe that with industry consolidation and the elimination of UNEs in certain areas that special access pricing will be regulated by market forces. As demonstrated herein, pricing flexibility has resulted in special access rates that are unjust, unreasonable, discriminatory and not in the public interest.

Now more than ever, Commission intervention is necessary to ensure that special access rates, terms and conditions are just and reasonable. The FCC should eliminate rules that attempt to gauge whether competition exists in a given market for special access services.⁵¹ Revamping the existing pricing flexibility triggers will not address the current situation. Competition has not developed for special access services, and the BOCs have “exercised market power to extract massive windfalls.”⁵²

XO supports proposals put forth by AT&T and the Ad Hoc Telecommunications Users Committee that the FCC should “revoke pricing flexibility and reinitialize price caps to levels designed to produce normal, not monopoly returns.”⁵³ “In order to eliminate the excess earnings presently being generated by ILEC access services, all access rates should be reinitialized at their current embedded cost, based upon the last-authorized 11.25% rate of return.”⁵⁴

⁵¹ *ETI Study* at 3.

⁵² *AT&T Petition* at 39.

⁵³ *AT&T Petition* at 39.

⁵⁴ *ETI Study* at 4.

Reducing special access charges for services subject to Phase II pricing flexibility to rates that would produce an 11.25% rate of return is necessary to bring the current special access rates in line with what rates would be in a competitive market. In advocating for regulation of special access pricing, XO is not contesting deregulation altogether. Where markets are competitive, deregulation may be appropriate. With regard to special access, however, deregulation has been a failed experiment. Pricing flexibility for special access was in place for five years, and it proved incapable of stabilizing prices. The ILECs have taken advantage of the current rules, and while they are reaping the benefits of the freedom associated with pricing flexibility, competitors and end users are suffering.

XO supports the proposal advocated in the *ETI Study* of downward pricing flexibility. The *ETI Study* proposes that once existing rate levels for special access have been reinitialized to eliminate excessive prices, the Commission could grant downward pricing flexibility across all access markets.⁵⁵ Downward pricing flexibility would allow the ILECs to reduce prices in response to competition and “provides a self-executing regulatory device that will automatically assure the appropriate regulatory treatment of ILEC rates without the need to assess the extent to which actual and effective competition is present with respect to any particular ILEC service.”⁵⁶ ETI put it best: “Since ILECs should not be able to raise prices where competition is present, they have no legitimate need for pricing flexibility in the upward direction.”⁵⁷ Downward pricing flexibility, including contract tariffing authority, gives the ILECs what they claim they need—the ability to respond to competitive pressure.

⁵⁵ *ETI Study* at 9-10.

⁵⁶ *ETI Study* at 10.

⁵⁷ *ETI Study* at 10 (also noting that the fact that “ILECs seek authority to increase prices without regulatory justification and review cannot be squared with their claimed need to be able to ‘rapidly respond’ to competitive pressure.”)

IV. CONCLUSION

For the foregoing reasons, the Commission should abolish the special access pricing flexibility rules and adopt reform suggested by AT&T and the Ad Hoc Telecommunications Users Committee.

Respectfully submitted,

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Dated June 13, 2005.